

§ 70.114 Penalties for aiding and abetting understatement of tax liability.

(a) *Imposition of penalty.* Any person—
(1) Who aids or assists in, procures, or advises with respect to, the preparation or presentation of any portion of a return, affidavit, claim, or other document in connection with any matter arising under the internal revenue laws,

(2) Who knows that such portion will be used in connection with any material matter arising under the internal revenue laws, and

(3) Who knows that such portion (if so used) will result in an understatement of the liability for tax of another person, shall pay a penalty with respect to each such document in the amount determined under paragraph (b).

(b) *Amount of penalty*—(1) *General.* Except as provided in paragraph (b)(2) of this section, the amount of the penalty imposed by paragraph (a) of this section shall be \$1,000.

(2) *Corporations.* If the return, affidavit, claim, or other document relates to the tax liability of a corporation, the amount of the penalty imposed by paragraph (a) of this section shall be \$10,000.

(3) *Only one penalty per person per period.* If any person is subject to a penalty under paragraph (a) of this section with respect to any document relating to any taxpayer for any taxable period (or where there is no taxable period, any taxable event), such person shall not be subject to a penalty under paragraph (a) of this section with respect to any other document relating to such taxpayer for such taxable period (or event).

(c) *Activities of subordinates*—(1) *General.* For purpose of paragraph (a) of this section, the term “procures” includes,

(i) Ordering (or otherwise causing) a subordinate to do an act, and

(ii) Knowing of, and not attempting to prevent, participation by a subordinate in an act.

(2) For purposes of paragraph (c)(1) of this section, the term “subordinate” means any other person (whether or not a director, officer, employee, or agent of the taxpayer involved) over

whose activities the person has direction, supervision, or control.

(d) *Taxpayer not required to have knowledge.* Paragraph (a) shall apply whether or not the understatement is with the knowledge or consent of the persons authorized or required to present the return, affidavit, claim, or other document.

(e) *Certain actions not treated as aid or assistance.* For purposes of paragraph (a)(1) of this section, a person furnishing typing, reproducing, or other mechanical assistance with respect to a document shall not be treated as having aided or assisted in the preparation of such document by reason of such assistance.

(f) *Penalty in addition to other penalties.* The penalty imposed by this section shall be in addition to any other penalty provided by law.

(26 U.S.C. 6701)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990]

ABATEMENTS, CREDITS AND REFUNDS*Procedure in General***§ 70.121 Amounts treated as overpayments.**

(a) The term *overpayment* includes any payment of any internal revenue tax which is assessed or collected after the expiration of the period of limitation applicable thereto.

(b) An amount paid as tax shall not be considered not to constitute an overpayment solely by reason of the fact that there was no tax liability in respect of which such amount was paid.

(26 U.S.C. 6401)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990]

§ 70.122 Authority to make credits or refunds.

The appropriate TTB officer, within the applicable period of limitations, may credit any overpayment of tax, including interest thereon, against any outstanding liability for any tax (or for any interest, additional amount, addition to the tax, or assessable penalty) owed by the person making the overpayment and the balance, if any, shall